

E-FILED 06/10/11  
LINK 564

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CITY OF COLTON, a California  
municipal corporation,

Plaintiff,

vs.

AMERICAN PROMOTIONAL  
EVENTS, INC., et al.,

Defendants.

AND ALL RELATED ACTIONS

Case No. ED CV 09-1864 PSG (SSx)

[Consolidated with Case Nos.: CV 09-6630 PSG (SSx), CV 09-6632 PSG (SSx), CV 09-7501 PSG (SSx), CV 09-7508 PSG (SSx), and CV 10-824 PSG (SSx)].

**~~PROPOSED~~ ORDER FOR  
DETERMINATION OF GOOD  
FAITH SETTLEMENT AND  
BARRING OF CLAIMS**

Judge: Honorable Philip S. Gutierrez  
Hearing Date: June 13, 2011  
Time: 1:30 p.m.  
Courtroom: 880

1           Zambelli Fireworks Manufacturing Company, Inc., Zambelli Fireworks  
 2 Company, aka Zambelli Fireworks Internationale, and Zambelli Fireworks  
 3 Manufacturing Company (collectively, “Settling Defendants”) filed a Motion for  
 4 Determination of Good Faith Settlement and Barring of Claims (“Motion”) in the  
 5 above-captioned action (“Consolidated Action”). The Motion relates to the  
 6 settlement agreement (“Settlement Agreement”) entered into by and between the  
 7 City of Colton, the City of Rialto, and the Rialto Utility Authority on the one hand,  
 8 and Settling Defendants on the other hand. The Settlement Agreement is attached as  
 9 **Exhibit 1** to the Declaration of Martin N. Refkin, submitted with the Motion.

10           This matter came on regularly for hearing before this Court on June 13, 2011  
 11 in Department 880, before the Honorable Philip S. Gutierrez. After considering the  
 12 moving and opposition papers and declarations of counsel, the Settlement  
 13 Agreement submitted to the Court for approval, and the record as a whole, the Court  
 14 hereby finds that the Settlement Agreement entered into by and between the Settling  
 15 Defendants and the City of Colton, the City of Rialto, and the Rialto Utility  
 16 Authority, was entered into in good faith and is fair, reasonable and consistent with  
 17 the purposes of the Comprehensive Environmental Response, Compensation and  
 18 Liability Act (“CERCLA”), 42 U.S.C. section 9601, *et seq.*, Resource Conservation  
 19 and Reclamation Act (“RCRA”), federal common law, California Code of Civil  
 20 Procedure sections 877 and 877.6(2), and state law theories for the apportionment of  
 21 liability among alleged joint tortfeasors.

22           The matter having been briefed, argued and submitted for decision, and good  
 23 cause appearing,

24  
 25           **IT IS HEREBY ORDERED** that the Motion is **GRANTED**, and **IT IS**  
 26 **FURTHER ORDERED** that:

- 27           1.     The Settlement Agreement attached as Exhibit 1 to the Declaration of  
 28

1 Martin N. Refkin submitted with the Motion is hereby approved as a good faith  
2 settlement and afforded all the rights and protections that accompany this  
3 determination.

4 2. Section 6 of the Uniform Comparative Fault Act, 12 U.L.A. 147  
5 (1996), in pertinent part, is hereby adopted as the federal common law in this case  
6 for the purposes of determining the legal effect of the Settlement Agreement.

7 3. The Court further finds and determines that the Settlement Agreement  
8 has been entered into in good faith within the meaning of the California Code of  
9 Civil Procedure sections 877 and 877.6 and the rule of *Tech-Bilt, Inc. v. Woodward-*  
10 *Clyde & Associates*, 38 Cal.3d 488 (1985).

11 4. Pursuant to Section 6 of UCFA and Section 877.6 of the California  
12 Code of Civil Procedure, any and all claims for contribution or indemnity against  
13 the Settling Defendants (as defined in the Settling Agreement), arising out of the  
14 facts alleged in the Consolidated Action (except such claims which are specifically  
15 reserved by the terms of the Settlement Agreement), regardless of when such claims  
16 are asserted or by whom, are barred. Such claims by any non-settling Party are  
17 barred regardless of whether they are brought pursuant to CERCLA section 107,  
18 CERCLA section 113, or any other theory, as any claims against the Settling  
19 Defendants arising out of the facts alleged in the Consolidated Action are in the  
20 nature of contribution claims arising out of a common liability, whether framed in  
21 terms of federal or state statute or common law.

22 5. All claims, cross-claims and counterclaims and/or any other claims  
23 which have been made or were deemed asserted and denied against the Settling  
24 Defendants in the Consolidated Action are hereby dismissed with prejudice.

25 6. In light of the complexity of this litigation, the public interest in prompt  
26 cleanup and the statutory goal of providing finality and certainty, the Court further  
27 finds that there is no just reason to delay the entry of final judgment. Pursuant to  
28

1 Federal Rule of Civil Procedure 54(b), judgment is hereby entered in favor of the  
2 Settling Defendants with respect to all claims, cross-claims and counterclaims  
3 against said parties in the Consolidated Action.

4 **IT IS SO ORDERED.**

5  
6 Dated: 06/09, 2011

**PHILIP S. GUTIERREZ**

The Honorable Philip S. Gutierrez  
United States District Court